

Supreme Court, U. S.  
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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1976

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No. **76-428**

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INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS and DISTRICT 147 OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, *Petitioners*,

v.

NORTHEAST AIRLINES, INC., and DELTA AIR LINES, INC.,  
*Respondents*.

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**PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE FIRST CIRCUIT**

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September 22, 1976



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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1976

No.

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AERO-  
SPACE WORKERS and DISTRICT 147 OF THE INTER-  
NATIONAL ASSOCIATION OF MACHINISTS AND AERO-  
SPACE WORKERS, *Petitioners*,

v.

NORTHEAST AIRLINES, INC., and DELTA AIR LINES, INC.,  
*Respondents*.

**PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE FIRST CIRCUIT**

Petitioners International Association of Machinists and Aerospace Workers and one of its former Lodges, District Lodge 147 [hereinafter, "IAM" and "District 147," respectively], respectfully request that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the First Circuit entered in this proceeding on June 25, 1976.

**ORDERS AND OPINIONS BELOW**

The judgment and opinion of the Court of Appeals for the First Circuit were entered on June 25, 1976 (Appendices A and B at 1a-7a, *supra*). The opinion has been reported at 536 F.2d 975. The judgment of the District Court for the District of Massachusetts which dismissed petitioners' complaint was entered on July 25, 1975 (Appendix D at 11a). The District Court filed an opinion with that order and that opinion, Ap-

pendix E at 13a-17a, has been reported at 400 F.Supp. 372. On October 8, 1975, the District Court denied petitioners' motion for reconsideration (Appendix C at 9a).

### JURISDICTION

The judgment of the Court of Appeals for the First Circuit was entered on June 25, 1976, and this petition for certiorari has been filed within 90 days of that date. This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1254(1).

### QUESTIONS PRESENTED

1. On a merger of Northeast Airlines into Delta Air Lines, was Delta required by the Railway Labor Act and by this Court's decision in *John Wiley & Sons v. Livingston* to exert every reasonable effort with petitioners to settle all disputes concerning the survival of collectively bargained rights of Northeast employees represented by petitioners?

2. Was the District Court's original jurisdiction to enforce the right of employees under the Railway Labor Act to bargain through a representative of their choice preempted by the Civil Aeronautics Board's order requiring Delta and Northeast to integrate the seniority lists of their employees upon the merger?

### STATUTORY PROVISIONS INVOLVED

This case involves rights and duties created by Sections 2, First, Second and Fourth of the Railway Labor Act, 45 U.S.C. §§ 152, First, Second and Fourth. Sections 401(k)(4), 408(b), and 1106 of the Federal Aviation Act of 1958, 49 U.S.C. §§ 1371(k)(4), 1378(b), and 1506, are also involved. These statutory provisions appear herein as Appendix F at 19a-20a.

### STATEMENT OF THE CASE

In 1971, Northeast Airlines, Inc., and Delta Air Lines, Inc., two certificated common carriers by air, agreed to merge and sought the approval of the Civil Aeronautics Board [hereinafter, "CAB" or "Board"] under Sections 401 and 408 of the Federal Aviation Act of 1958, 49 U.S.C. §§ 1371, 1378. According to the merger agreement, Delta was to be the surviving corporation and was to assume "all the rights, privileges, powers and franchises" possessed by Northeast prior to the merger as well as all of Northeast's debts, liabilities and duties. App. I at 61.<sup>1</sup>

At the time that Northeast entered into its merger agreement with Delta, Northeast was a party to two collective bargaining agreements with the IAM covering approximately 1,000 Northeast employees in the Supervisors, and Mechanics and Related Employees crafts or classes. Those agreements were entered into under the auspices of the Railway Labor Act, 45 U.S.C. § 151, *et seq.* Northeast had agreed in both of those collective bargaining contracts to a provision which had been in effect since 1949 (App. I at 40), and which provided that the agreements were to be binding upon Northeast's successors or assigns, and that in "case of a consolidation or merger," the company and union were to "meet without delay" to bargain "for proper provisions for the protection of employees' seniority and other rights." Art. 3, § B, App. I at 13.

In November 1971 District 147, the subordinate unit of the IAM responsible for representing Northeast-IAM employees, attempted to invoke Article 3(B), as well as Section 2, First of the Railway Labor Act, to negotiate with Northeast for proper provisions for the

<sup>1</sup> "App. I" refers to the appendix filed in 1st Cir. No. 72-1038 and designated as part of the record in this instant case. "App. II" refers to the separately paginated appendix filed in this case.

protection of employees' seniority and other rights. Northeast declined to negotiate the protection issue prior to the merger, arguing that negotiations before then were premature. Northeast, however, did agree "to discuss" the question with District 147. Dissatisfied, petitioners brought suit against Northeast in the United States District Court for the District of Massachusetts to compel Northeast to bargain and to enjoin the merger pending completion of that bargaining. On February 3, 1972, the District Court denied the petitioners' request for a preliminary injunction, 337 F.Supp. 499, and on April 20, 1972, the United States Court of Appeals for the First Circuit affirmed, albeit for a different reason, 473 F.2d 549. This Court denied a petition for a writ of certiorari on October 10, 1972. 409 U.S. 845.

In affirming the District Court's denial of a preliminary injunction, the Court of Appeals held that System Boards of Adjustment, and not federal courts, had the jurisdiction under the Railway Labor Act to interpret contracts and, thus, petitioners' claim that Article 3(B) of those contracts required pre-merger bargaining was not properly before it. 473 F.2d at 554-55. The court also rejected petitioners' second argument that the issue was a major dispute requiring bargaining. According to the court, since the merger agreement was before the CAB pending its approval, any question of protections to be afforded employees in the post-merger operations was not a mandatory subject for bargaining by Northeast. *Id.* at 559-60. Earlier in its opinion the court had noted that this Court's decision in *Wiley* may impose a duty on Delta under the Northeast contract, *Id.* at 553n.5, but the court stated that it expressed "no opinion at this time as to whether Delta may be required to negotiate separately with NE workers about any of the changes [in

post-merger employment rights] when they occur." *Id.* at 560n.17.

Shortly after the Court of Appeals rendered its decision, District 147 presented on April 24, 1972, its claim under Article 3(B) to the System Board of Adjustment under the Northeast-IAM mechanics' contract. Northeast countered on procedural grounds, asserting in part that the contractual grievance was untimely. App. II at 83. On July 12, 1972, a neutral referee agreed with Northeast's challenge on procedural grounds and dismissed District 147's grievance. App. II at 84.

In the meantime, by orders issued May 19, 1972, the CAB approved the Delta-Northeast merger and imposed labor protective provisions as a condition of its approval. App. II at 47-78. Besides providing monetary protections for employees affected by the merger, the provisions at Section 3 called for the integration of the seniority lists of the Northeast and Delta employees "in a fair and equitable manner, including, where applicable, agreement through collective bargaining between the carriers and the representatives of the employees affected." App. II at 61. On July 5, 1972, Delta circulated to all Northeast employees a notice which welcomed them into the "Delta family" and informed them of their new conditions of employment once they became part of the merged system. D.App.C.<sup>2</sup> These new conditions of employment countermanded several contractual rights of the Northeast-IAM employees, such as bidding and bumping seniority rights, and effectively deprived the employees of anticipated contractual rewards for long and faithful serv-

<sup>2</sup> "D.App.C." refers to a notice sent by Delta which was placed in the record in the District Court and inadvertently omitted from the appendix in the Court of Appeals. On December 17, 1975, the appellate court granted petitioners permission to refer to that notice in their brief.

ice to Northeast, such as increases in vacation leaves and severance pay.<sup>3</sup> On August 1, 1972, Northeast merged into Delta, and sometime thereafter, former Northeast-IAM employees were absorbed into the Delta system, using an integrated seniority list that had been worked out with a committee of Northeast mechanics, and not with the IAM.

Petitioners' complaint was still pending in District Court after the merger and in October 1973 petitioners moved to add Delta as a defendant. Petitioners' suit was grounded on, among others, 28 U.S.C. § 1337 and the Railway Labor Act, and sought to require Delta to bargain with the IAM over what contractual rights under the Northeast-IAM contracts survived the merger, if at all. Delta has consistently refused to acknowledge that it has an obligation to bargain over those protections or to arbitrate if an impasse was reached. Petitioners also sought by their amended complaint to set aside the integrated seniority list since it was not negotiated with the duly designated representative under the Railway Labor Act—the IAM.

On July 25, 1975, the District Court dismissed petitioners' complaint, concluding that the complaint raised issues within the scope of the CAB labor protective provisions and that the Board had exclusive jurisdiction to consider those claims. Appendix E at 17a. Petitioners moved for reconsideration, and on October 8, 1975, the court denied that motion. Appendix C at 9a.

<sup>3</sup> An example of the Northeast-IAM system of future benefits for *past* service is Article 17, Section B, of the mechanics contract, which provided:

Employees who have grown old in the service of the Company and have become unable to follow their regular work to advantage, shall be given preference of such light work as they are able to handle in their work classification.

Even though on appeal the Court of Appeals concluded that the District Court had erroneously found that the CAB had exclusive jurisdiction to consider petitioners' attack on Delta's refusal to bargain, the appellate court nevertheless affirmed, holding that since petitioners were not certified to represent Delta employees, Delta had no obligation to bargain with them over what rights under the Northeast-IAM contract survived the merger, if at all. Appendix B at 6a. The court then distinguished this Court's decision in *John Wiley & Sons v. Livingston*, 376 U.S. 543 (1964), by stating that *Wiley* required arbitration "but did not require negotiation with the union, which is quite a different story." Appendix B at 6a-7a. Since petitioners had not alleged that they had instituted contractual grievance proceedings over Delta's refusal to bargain, the court found that *Wiley* did not apply. Moreover, the Court of Appeals for the First Circuit agreed with the District Court that petitioners' challenge to the manner in which the seniority list was integrated, albeit couched in terms of a violation of the Railway Labor Act, was within the CAB's jurisdiction and was outside the court's subject matter jurisdiction. Appendix B at 4a.

## REASONS FOR GRANTING THE WRIT

### I

#### The Decision of the Court of Appeals Destroyed Statutory and Contractual Rights and Duties Which Are Important to Stable Labor Relations in the Air Transportation Industry

Fundamental to the entire statutory scheme of labor relations established by the Railway Labor Act, 45 U.S.C. § 151, *et seq.*, is the command of Section 2, First of that Act, 45 U.S.C. § 152, First, that both employees and carriers "exert every reasonable effort to make and maintain agreements . . . , and to settle all disputes . . . ." That duty is in essence the "heart"

of the Act, *Chicago & N.W. Ry. v. United Transportation Union*, 402 U.S. 570, 574 (1971), and colors all of the obligations and rights of the Act, including the procedures for settling both major and minor disputes. Petitioners relied upon that right and obligation to enforce the right of the Northeast-IAM employees to determine what contractual rights under the Northeast-IAM contracts may have survived the merger. By failing to recognize that the right to act as the exclusive representative under the Act must of necessity survive until the contractual right survival question is resolved, *John Wiley & Sons v. Livingston*, 376 U.S. 543, 552 (1964), the Court of Appeals has destroyed the Northeast-IAM employees' rights under Section 2, First at a very critical stage of their employment. By taking away the means to enforce those contractual rights, the court has in effect taken away those rights.

The problem presented by this case is not limited solely to Northeast employees; rather, it is a potential threat to approximately 180,000 employees who are employed by the 143 air carriers under the jurisdiction of the National Mediation Board and covered by the 358 contracts under the Railway Labor Act which are currently in effect.<sup>4</sup> Because of today's economic environment, many air carriers caught in the ever ongoing rise in fuel prices are searching both the industry and outside for available merger partners. *E.g., Trans International Airlines—Saturn Airways—Acquisition*, CAB Docket 26951. Thus, it is highly likely that more mergers will be proposed in the near future. Employees' rights under various collective bargaining agreements will obviously be affected by such mergers and, consequently, it becomes important to know before the merger, and the loss of those rights,

<sup>4</sup> Conversation of September 13, 1976, with Mr. Michael H. Cimini, Senior Research Analyst, NMB.

exactly what those rights are and, more importantly, how to enforce them. But, as a result of the Court of Appeals decision, especially when viewed together with its earlier decision at 473 F.2d 549, airline employees do not know if the principles of *Wiley* apply to them and, if they do, how they can be enforced.

Rights and obligations in merger situations of employees and carriers in the air transportation industry are of great importance today, and, petitioners submit, should not be permitted to remain as confused as the Court of Appeals decision has left them. Unlike industries covered by the National Labor Relations Act, 29 U.S.C. § 151, *et seq.*, with its National Labor Relations Board, the air transportation industry does not have a special administrative agency charged with enforcing and policing our national labor relations policy to assure a stable labor environment. While Congress has required carriers and employees to establish arbitration tribunals to resolve contract disputes, Section 204, 45 U.S.C. § 184, the courts are the only available meaningful forum open to employees to enforce the commands of Section 2, First.<sup>5</sup> If access to that forum is denied, the foundation for stable labor relations which has worked so well in the past may be undermined.

## II

### **The Decision of the Court of Appeals Conflicts With the Decision of This Court in *John Wiley & Sons v. Livingston***

As this Court made clear in *John Wiley & Sons v. Livingston*, *supra*, a collective bargaining agreement "is not an ordinary contract." *Id.* at 550. Rather, it is a code regulating the industrial community and is created by force of law under our national labor

<sup>5</sup> See, *Delta-Northeast Merger Case*, CAB Order 73-9-42 at 4; *Union of Professional Airmen v. CAB*, 511 F.2d 423, 426 n.4 (D.C. Cir. 1975).

relations acts by negotiations between union and management. Moreover, a Railway Labor Act contract establishes rates of pay, rules, and working conditions that may be changed only by a deliberately long and drawn out procedure, *e.g.*, *Detroit & T. S. L. R.R. v. United Transportation Union*, 396 U.S. 142, 148-51 (1969), and may continue in force even though that agreement by its terms has expired. *E.g.*, *Brotherhood of Railway Clerks v. Florida E. C. Ry.*, 384 U.S. 238, 246-47 (1966). Recognizing the extra-contractual nature of collective bargaining agreements, this Court in *Wiley*, a case arising under the National Labor Relations Act, stated that:

We hold that the disappearance by merger of a corporate employer which has entered into a collective bargaining agreement with a union does not automatically terminate all rights of the employees covered by the agreement, and that, in appropriate circumstances, . . . the successor employer may be required to arbitrate with the union under the agreement. 376 U.S. at 548.

That basic holding was reaffirmed recently by this Court in *Howard Johnson Co. v. Detroit Local, Hotel Employees*, 417 U.S. 249, 254 (1974).

In *Wiley* this Court rejected an argument that the union which represented the predecessor's employees was not a proper party to represent them on the survival issue. Br. for Petitioner at 44-48, Sup. Ct. No. 91, Oct. 1963 Term. Noting that the union did not assert any bargaining rights independent of the agreement, and that it did not seek to negotiate a new agreement, 376 U.S. at 551, this Court expressly found that the old union was a proper party:

The fact that the Union does not represent a majority of an approximate bargaining unit in *Wiley* does not prevent it from representing those employees who are covered by the agreement which

is in dispute and out of which Wiley's duty to arbitrate arises. *Id.* at 551.n.5.

In the case at bar, petitioners have relied upon the principles expressed in *Wiley* to ask Delta to bargain with them about what rights of the Northeast-IAM contracts survived the merger and, if so, for how long those rights survived. Petitioners have stated that they are "not seeking the right to act as the bargaining representative for the former NE mechanics in their employment relationship with Delta *after* the merger was consummated and the NE-IAM employees were fully absorbed into the Delta System."<sup>6</sup> Reply Br. at 3, 1st Cir., No. 75-1435. Moreover, as in *Wiley*, petitioners are not seeking rights which would have conflicted with any other collective bargaining contract since Delta did not have a contract covering the same crafts or classes of employees as were represented by the IAM on Northeast. See 376 U.S. at 552n.5.

Nevertheless, the Court of Appeals concluded that since the "merger created real doubts about whether [petitioners] . . . represent the majority of any Delta craft or class of employees," Appendix B at 6a, Delta had no obligation under the Railway Labor Act to bargain with petitioners over the contractual rights survival issue. In making that ruling, the Court of Appeals completely disregarded the fact that the IAM was the duly designated representative of certain Northeast employees; and it was *that certification* which petitioners were seeking to enforce. By ignoring that fact, the Court of Appeals disregarded this Court's holding in *Wiley* that the union which represented the employees originally covered by the contract in question

<sup>6</sup> The approximately 1,000 Northeast employees represented by the IAM at the time of the merger constituted approximately 25 to 30% of the Delta employees in the same crafts or classes.

is the proper party to represent *those employees* in the contractual rights survival issue *after the merger*. 376 U.S. at 551n.5.

The Court of Appeals attempted to distinguish *Wiley* by arguing that the duties to bargain and to arbitrate are different, and somehow distinct. Petitioners respectfully submit that such a distinction is meaningless, and more importantly both contravenes the express commands of Section 2, First of the Railway Labor Act "to exert every reasonable effort . . . to settle all disputes," and emasculates this Court's decision in *Wiley*. Arbitration, it is respectfully submitted, is not separate and distinct from the duty to bargain imposed by Section 2, First of the Act. Rather, it is an integral part of that duty and comes into play only after the parties, because of a disagreement after proper bargaining, are unable to reach an agreement. The duty to bargain, it is submitted, is the basic right and it begins with negotiations and continues through the arbitration. *See, Chicago & N. W. Ry. v. United Transportation Union, supra*. Consequently, it is meaningless to artificially dissect that right as the Court of Appeals has attempted.

The Court of Appeals disregard of the continuing and surviving nature of the IAM certification to represent Northeast employees on this limited issue raises problems which are important to peaceful and stable labor relations. Employees and carriers in the airline industry, as well as in all other industries, need to know who is a proper party to represent them in bargaining about what contractual rights survive a merger. Moreover, both employees and carriers need to know if the principles of *Wiley* are still good law. While this Court has recently stated that they are, the Court of Appeals, by depriving the employees of a means to enforce them, has said they are not. Petitioners respectfully ask this Court to resolve this dispute.

### III

#### **The Decision of the Court of Appeals Deprives Federal Courts of Their Traditional Jurisdiction in a Manner Not Contemplated by Congress and in Conflict With a Decision of This Court and of the Eighth Circuit**

Seniority rights in the air transportation industry, as in most other industries, are probably one of the most important collective bargained for rights employees possess. Seniority generally determines who works, when they work, and who is laid off first. Consequently, it is not surprising that any threatened change in those rights, particularly seniority rankings vis-a-vis other employees, can be potentially explosive. The CAB has recognized this potential cause of unrest, and for the past two and a half decades has normally required that in case of a merger of two airlines "provision shall be made for the integration of seniority lists in a fair and equitable manner . . ." *E.g.*, Appendix B at 4a n.1; *see, Braniff-Mid-Continent Merger Case*, 17 CAB 19, 21 (1953) (Supplemental Opinion).

Simply stated, the policy of the Board in [merger situations] . . . has been to charge the receiving company with the duty and responsibility of making provisions for the integration of the seniority lists in a fair and equitable manner, utilizing when applicable the collective bargaining procedures contemplated by the Railway Labor Act. *Delta-C&S Seniority List*, 29 CAB 1347, 1349 (1959).

In the case at bar, petitioners have asserted that if Delta engaged in negotiations with a group of Northeast employees represented by the IAM, Section 2, Second of the Railway Labor Act, required that those collective negotiations be with the exclusive bargaining representative of those employees—the IAM—and with no other bogus representative.<sup>7</sup> Ordinarily, federal

<sup>7</sup> But *see, Delta-Northeast Merger Case*, Order 73-9-42 (September 11, 1973).

courts have subject matter jurisdiction to consider a claim that Section 2, Second was violated. *Accord, Tunstall v. Brotherhood of Locomotive Firemen*, 323 U.S. 210 (1944). However, on this issue the Court of Appeals concluded that the jurisdiction of the federal courts was preempted by that of the CAB since petitioners were questioning the manner in which Delta complied with the CAB's order, and that "jurisdiction in the first instance to rule on compliance with its own Labor Protective Provisions and to determine the validity of the seniority lists belongs with the CAB . . . ." Appendix B at 5a.

In so ruling, the appellate court followed the *dicta* in *Kesinger v. Universal Airlines, Inc.*, 474 F.2d 1127, 1131-32 (6th Cir. 1973), and the stated reason for the holding in *Carey v. O'Donnell*, 506 F.2d 107, 110 (D.C. Cir. 1974), *cert. denied*, 419 U.S. 1110 (1975).

This conclusion of the Court of Appeals that the CAB has exclusive jurisdiction to hear petitioners' claims that Section 2, Second of the Railway Labor Act was violated by Delta, is in conflict with this Court's recent decision in *Nader v. Allegheny Airlines, Inc.*, Sup. Ct. No. 75-455, decided June 7, 1976, where this Court had reached a different conclusion on an analogous issue—*i.e.*, whether the Board's authority under Section 411, 49 U.S.C. § 1381, to stop "unfair" or "deceptive" practices of airlines preempted similar issues in fraudulent overbooking actions. Moreover, the Court of Appeals conclusion of preemption is in conflict with the decision of the Eighth Circuit in *Augsburger v. Brotherhood of Locomotive Engineers*, 510 F.2d 853 (8th Cir. 1975), where the court concluded that courts need not defer to the primary jurisdiction of the Interstate Commerce Commission in seniority integration matters where a violation of the Railway Labor Act—*i.e.*, duty of fair representation—is alleged.

Exclusive jurisdiction in the CAB to consider petitioners' claims under Section 2, Second of the Railway Labor Act is also contrary to the expressed intent of Congress stated in Section 1106 of the Federal Aviation Act, 49 U.S.C. § 1506, that: "Nothing contained in this Act shall in any way abridge or alter the remedies now existing at common law or by statute . . . ." Moreover, exclusive jurisdiction is inappropriate in matters involving labor issues arising from labor protective provisions because, as the CAB has stated:

[I]t [the Board] lacks expertise in labor matters, that it is not charged with responsibility to act as a labor board for the aviation industry, and that its limited resources are more appropriately directed to the resolution of those tasks directly assigned to it and with which it is familiar. *Delta-Northeast Merger Case*, *supra* note 7, Order 73-9-42 at 4.

Because of the volatile and important nature of the subject of seniority integration, it is reasonable to expect that challenges to that integration will be raised in almost every merger approved by the CAB. At the present time it is unclear whether the Board is the only forum available to hear those challenges; while some courts have said it is, this Court and the Eighth Circuit have indicated otherwise. More importantly, the Board itself, having disavowed any interest in the compliance issue, does not yet know the full extent of its duties in such challenges. Since this question is so important to stable labor relations, petitioners respectfully request that this Court settle this question so that employees' rights are not lost in the procedural maze that has been created by this jurisdictional dispute. *Compare, Delta-Northeast Merger Case*, Order 73-9-42, with, *Delta-Northeast Merger Case*, Order 75-1-6, *rev'd*, D.C. Cir. No. 75-1066, decided May 27, 1975.

**CONCLUSION**

For these reasons, a writ of certiorari should issue to review the judgment of the United States Court of Appeals for the First Circuit.

Respectfully submitted,

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September 22, 1976

**APPENDIX A**

**Judgment of the United States Court of Appeals for the  
First Circuit entered June 25, 1976**

1a

UNITED STATES COURT OF APPEALS  
FOR THE FIRST CIRCUIT

No. 75-1435

INTERNATIONAL ASSOCIATION OF MACHINISTS  
AND AEROSPACE WORKERS, ET AL.,  
*Plaintiffs, Appellants,*

v.

NORTHEAST AIRLINES INC. and  
DELTA AIRLINES INC.,  
*Defendants, Appellees.*

**Judgment**

Entered June 25, 1976

This cause came on to be heard on appeal from the United States District Court for the District of Massachusetts, and was argued by counsel.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The judgment and the order of the District Court are affirmed.

By the Court:

/s/ DANA N. GALLUP  
*Clerk*

[cc: Messrs. Segal and Starrett.]

**APPENDIX B**

**Opinion of the United States Court of Appeals for the  
First Circuit entered June 25, 1976**

UNITED STATES COURT OF APPEALS  
FOR THE FIRST CIRCUIT

No. 75-1435

INTERNATIONAL ASSOCIATION OF MACHINISTS  
AND AEROSPACE WORKERS,  
and  
DISTRICT 147 OF THE INTERNATIONAL ASSOCIATION OF  
MACHINISTS AND AEROSPACE WORKERS,  
*Plaintiffs, Appellants,*

v.

NORTHEAST AIRLINES, INC.,  
and  
DELTA AIR LINES, INC.,  
*Defendants, Appellees.*

*Appeal from the United States District Court  
for the District of Massachusetts*

[HON. JOSEPH L. TAURO, U.S. District Judge]

400 F. Supp. 372

Before COFFIN, Chief Judge,  
ALDRICH and CAMPBELL, Circuit Judges.

*Robert M. Segal, with whom Donald J. Siegal, Segal  
Roitman & Coleman, John O'B. Clarke, Jr., Highsaw &  
Mahoney, and Plato E. Papps were on brief, for appel-  
lants.*

*Loyd M. Starrett, with whom Henry E. Foley, Paul V.  
Lyons, Foley, Hoag & Eliot, Frank F. Rox, and Robert S.  
Harkey were on brief, for appellees.*

June 25, 1976

COFFIN, Chief Judge. This appeal is from a summary judgment dismissing plaintiffs-appellants' amended complaint on jurisdictional grounds. 400 F. Supp. 372. Plaintiffs were the bargaining representatives of certain North-

east Airline employees prior to the merger of Northeast into Delta Air Lines. The merger occurred pursuant to a Civil Aeronautics Board order which included a number of "Labor Protective Provisions", one of which specifically provided for the integration of seniority lists.<sup>1</sup> Plaintiffs' amended complaint alleges that defendants violated the Railway Labor Act, 45 U.S.C. §§ 151 *et seq.*, and the unions' two collective bargaining agreements with Northeast by refusing to bargain with plaintiffs about the post-merger rights of the unions' members. This court has already held it is without jurisdiction to consider the alleged violation of the collective bargaining agreements, *International Ass'n of Machinists and Aerospace Workers v. Northeast Airlines, Inc.*, 473 F.2d 549, 554-55, *cert. denied*, 409 U.S. 845 (1972), and that, on the merits, Northeast had no duty to bargain with plaintiffs in advance about the effects of the merger upon plaintiffs' members. *Id.* at 550-60. Plaintiffs' remaining challenges are to Delta's failure to discuss the integration of seniority lists with them and its refusal in general to bargain with them about whether any rights arising from the collective bargaining agreements survived the merger.

Allowing the union, which had represented certain employees before the merger, to participate in discussing integration of seniority lists would seem not to involve an onerous burden, although the CAB, under whose Labor Protective Provisions the integration occurred, has held that such a union need not automatically be recognized as the employees' representative for Labor Protective Provi-

<sup>1</sup> "Section 3. Insofar as the merger affects the seniority rights of the carriers' employees, provisions shall be made for the integration of seniority lists in a fair and equitable manner, including, where applicable, agreement through collective bargaining between the carriers and the representatives of the employees affected. In the event of failure to agree, the dispute may be submitted by either party for adjustment in accordance with section 13."

sion purposes. *Delta-Northeast Merger Case*, CAB Order 73-9-42, at 5. However, the real question is not whether it would have been a good idea for Delta to discuss the integration of seniority lists with plaintiffs, but whether the district court had jurisdiction to decide that it should have done so. The CAB has broad authority to impose seniority lists in airline mergers, even in contravention of existing collective bargaining agreements, and to determine the procedural methods to be followed. *E.g.*, *Kent v. CAB*, 204 F.2d 263 (2d Cir.), *cert. denied*, 346 U.S. 826 (1953); *American Airlines, Inc. v. CAB*, 445 F.2d 891 (2d Cir. 1971), *cert. denied*, 404 U.S. 1015 (1972). Accordingly, even if we assume that, as plaintiff argues, the CAB intended Railway Labor Act rights to control the method of integration, jurisdiction in the first instance to rule on compliance with its own Labor Protective Provisions and to determine the validity of the seniority lists belongs with the CAB, notwithstanding any diffidence it may have shown toward undertaking this task. *See Kesinger v. Universal Airlines, Inc.*, 474 F.2d 1127 (6th Cir. 1973); *Carey v. O'Donnell*, 506 F.2d 107 (D.C. Cir. 1974), *cert. denied*, 419 U.S. 1110 (1975). Therefore, to the extent that plaintiffs attack the seniority lists, and argue that the procedures Delta followed in integrating them were inconsistent with the commands of the Labor Protective Provisions, the district court correctly ruled that it did not have jurisdiction.

On the other hand, plaintiffs also assert rights independent of, and in no way contrary to, the Labor Protective Provisions, such as arguably accrued severance and vacation benefits. The district court was incorrect in assuming that the only matters about which plaintiffs wanted to bargain directly involved the integration of the seniority lists. The CAB does not seek and need not have exclusive jurisdiction over all labor disputes caused by an airline merger. *Trans International Airlines, Inc.—Acquisition Agreement*, CAB Orders 76-3-126/-127 at 21-22; *Air Line Employees Ass'n v. CAB*, 413 F.2d 1082 (D.C. Cir. 1969) (per curiam).

Where there is no real question about whether a union is the legitimate representative of an airline's employees, the function of deciding the extent of the duty to bargain rests properly with federal courts. *International Ass'n of Machinists v. Northeast Airlines, Inc.*, 473 F.2d 549, at 555-56. Plaintiffs are not challenging the CAB Order, or saying it was incomplete. Thus, to the extent they complain that, apart from the Labor Protective Provisions, Delta had a duty to bargain with them, the district court erred in dismissing these claims for lack of jurisdiction.

However, the duty to bargain imposed by the Railway Labor Act is a duty to bargain with the chosen representative of the majority of a craft or class of employees. 45 U.S.C. § 152 Fourth; *Virginian Ry. v. System Federation No. 40, Ry. Employees*, 300 U.S. 515, 548 (1937). At the very least, the merger created real doubts about whether plaintiffs represent the majority of any Delta craft or class of employees, and where there is such doubt, federal courts leave resolution of the dispute to the National Mediation Board. *General Comm. of Adjustment, Bhd. of Locomotive Engineers v. Missouri-K.-T. R.R.*, 320 U.S. 323 (1943); *Ruby v. American Airlines, Inc.*, 323 F.2d 248 (2d Cir.), *cert. denied*, 376 U.S. 913 (1963); *cf. Brotherhood of Ry. & S.S. Clerks v. United Air Lines, Inc.*, 325 F.2d 576 (6th Cir.), *cert. dismissed as improvidently granted*, 379 U.S. 26 (1963). In the absence of National Mediation Board certification, 45 U.S.C. § 152 Ninth, there is no basis for finding a duty on the part of Delta to negotiate with plaintiffs. Their complaint was properly dismissed.

The Supreme Court decision in *John Wiley & Sons, Inc. v. Livingston*, 376 U.S. 543 (1964), does not mandate a different result, even apart from the fact that Railway Labor Act obligations are not identical to National Labor Relations Act obligations, *cf. Ruby v. American Airlines, Inc.*, *supra*, 323 F.2d at 255-56. *Wiley* required the employer to submit to arbitration, but did not require nego-

tiation with the union, which is quite a different duty. Plaintiffs do not allege that they have instituted grievance proceedings which are outstanding or that Delta has refused to submit to a System Board of Adjustment resolution of particular disputes concerning the survival of rights under the Northeast collective bargaining agreements. *Cf. Flight Engineers Int'l Ass'n, EAL Chapter v. Eastern Air Lines, Inc.*, 359 F.2d 303 (2d Cir. 1966). Therefore, the question whether Delta has a duty to submit to System Board of Adjustment proceedings is not before us<sup>2</sup> and, in the present context, *Wiley* mandates no other obligations.

*The judgment is affirmed.*

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<sup>2</sup> It would appear that such a determination would be within the jurisdiction of a federal court. 359 F.2d at 309. Should such a determination become necessary, the extent of the duty, if any, would be determined by whether the Northeast collective bargaining agreements have in fact expired. *Id.* at 309-11. In general, the terms of a Railway Labor Act collective bargaining agreement are not controlling after the collective bargaining agreement and any subsequent status quo period expire. *International Ass'n of Machinists v. Reeve Aleutian Airways, Inc.*, 469 F.2d 990 (9th Cir.), *cert. denied*, 411 U.S. 982 (1972).

**APPENDIX C**

**Order of the District Court for the District of Massachusetts entered  
on October 8, 1975, denying petitioners' motion for reconsideration**

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Civil Action No. 72-303-T

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE  
WORKERS AND DISTRICT 147 OF THE INTERNATIONAL AS-  
SOCIATION OF MACHINISTS AND AEROSPACE WORKERS,  
*Plaintiffs*

v.

NORTHEAST AIRLINES, INC., DELTA AIRLINES, INC.,  
*Defendants*

**Order**

TAURO, D.J.

1. This court's order of August 13, 1975, retaining jurisdiction in the above-entitled action pending its decision on the plaintiff's motion to alter, amend and vacate its judgment and order of July 28, 1975, is VACATED.

2. Upon consideration of the briefs submitted by the parties, the plaintiff's motion to alter, amend and vacate this court's judgment and order of July 28, 1975, is DENIED. Civil Aeronautics Board Order No. 75-1-6, upon which the plaintiff's motion was based, was subsequently reversed by the United States Court of Appeals for the District of Columbia Circuit. *Committee of Former Northeast Stewardesses v. Civil Aeronautics Board*, No. 75-1066 (D.C. Cir. May 27, 1975). Moreover, the arguments made by the plaintiff in his brief were foreclosed by the First Circuit's earlier decision in this case. *International Association of Machinists and Aerospace Workers, et al. v. Northeast Airlines, Inc.*, 473 F.2d 549, 559-60 (1st Cir.), *aff'g.*, 337 F. Supp. 499 (D. Mass.), *cert. denied*, 409 U.S. 845 (1972).

/s/ J. L. TAURO  
*United States District Court Judge*

**APPENDIX D**

**Order of the District Court for the District of Massachusetts  
entered on July 25, 1975, dismissing complaint**

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Civil Action No. 72-303-T

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE  
WORKERS AND DISTRICT 147 OF THE INTERNATIONAL AS-  
SOCIATION OF MACHINISTS AND AEROSPACE WORKERS,  
*Plaintiffs*

v.

NORTHEAST AIRLINES, INC., DELTA AIRLINES, INC.,  
*Defendants*

**Order of Dismissal**

July 25, 1975

TAURO, D.J.

In accordance with the Court's Opinion and Order entered this date, It Is ORDERED that the complaint be, and it hereby is, dismissed.

By the Court,

/s/ DANIEL P. LOUGH III  
*Deputy Clerk*

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Civil Action No. 72-303-T

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE  
WORKERS AND DISTRICT 147 OF THE INTERNATIONAL AS-  
SOCIATION OF MACHINISTS AND AEROSPACE WORKERS,  
*Plaintiffs*

v.

NORTHEAST AIRLINES, INC., DELTA AIRLINES, INC.,  
*Defendants*

**Opinion and Order**

July 25, 1975

TAURO, D.J.

Plaintiffs (the Union) originally brought this action to compel Northeast Airlines, Inc. (Northeast) to negotiate with the Union prior to consummation of a merger of Northeast into Delta Airlines, Inc. (Delta) with respect to protective provisions relating to post-merger seniority and certain other matters. Plaintiff based its claim on section 3(b) of its collective bargaining agreement with Northeast and on section 152 First of the Railway Labor Act, 45 U.S.C. § 152 First. The Union's request for a preliminary injunction to enjoin Northeast and Delta from consummating the merger was denied. *International Association of Machinists and Aerospace Workers v. Northeast Airlines, Inc.*, 337 F. Supp. 499 (D. Mass.), *aff'd*, 473 F.2d 549 (1st Cir.), *cert. denied*, 409 U.S. 845 (1972). Thereafter, on August 1, 1972, the merger of Northeast into Delta was consummated and Northeast ceased to exist as a separate entity. The Union amended its complaint and now seeks an order compelling Delta to negotiate with the Union regarding seniority rights of the former Northeast employees represented by the Union.

Defendant Northeast's motion to dismiss was denied on November 29, 1973. After the complaint was amended to add Delta as a defendant, defendants filed a motion for reconsideration of the denial of the motion to dismiss and a motion for summary judgment, claiming that this court does not have subject matter jurisdiction over this action. For the reasons stated below, defendants' motion for summary judgment is granted.

## I

In upholding the district court denial of the request for a preliminary injunction, the Court of Appeals for the First Circuit held that this court does not have jurisdiction to interpret the terms of a collective bargaining agreement.

Disputes requiring the interpretation of the terms of a collective bargaining agreement are minor disputes. The Act provides that such disputes may be submitted by either party for settlement by a System Board of Adjustment and that the award of the Board is not subject to judicial review. 45 U.S.C. § 184. Because this section vests exclusive jurisdiction in the System Boards of Adjustment, the courts do not have jurisdiction to interpret the terms of a collective bargaining agreement.

*International Association of Machinists and Aerospace Workers v. Northeast Airlines, Inc.*, 473 F.2d at 554-55 (citations omitted). Although this court does not have jurisdiction to hear the Union's Article 3B claim, it is noteworthy that the Union has submitted that claim to the System Board of Adjustment and has received an adverse ruling.

## II

The Union claims that Delta, as the successor corporation to Northeast, has a duty to negotiate with the Union regarding seniority and other rights under 45 U.S.C. § 152

First. Delta claims that this court does not have jurisdiction to determine that question.<sup>1</sup>

The Supreme Court established that section 152 First is more than an exhortatory principle; that it had the force of law and that courts were the proper body to enforce its provisions. *Chicago & N.W. Ry. v. United Transportation Union*, 402 U.S. 570 (1971). The general rule, however, is not applicable where the dispute arises out of a merger of two airlines. Congress has provided a special mechanism for resolving the numerous problems attendant on such a merger. All such mergers will be approved only where the Civil Aeronautics Board (CAB) has found that the merger is not inconsistent with the public interest. CAB is authorized to condition approval of airline mergers on the acceptance by the parties of labor protective provisions designed to protect the employees of the merged airlines from any adverse impact the merger may have on conditions of employment.

One of the policies behind this grant of authority to the CAB is to prevent mergers adjudged by the Board to be in the public interest from being obstructed by labor disputes. Because of the danger of such obstruction, courts have held that the procedures of the Railway Labor Act are not available for disputes arising out of the merger which pertain to subjects covered by

<sup>1</sup> In its opinion affirming the denial of injunctive relief, the Court of Appeals stated "We express no opinion at this time as to whether Delta may be required to negotiate separately with NE workers about any of the changes when they occur." 473 F.2d at 560 n. 17. At that time, the CAB had not yet issued its order. The Court of Appeals had taken note of this fact. "The effects of the NE-Delta merger still depend on changes the nature of which are not at present known, because the CAB has not yet issued its order." 473 F.2d at 559. Thus, the Court of Appeals could not determine whether this dispute would be covered by the CAB order.

the Board's labor protective order, and should therefore, instead, be resolved by the procedures set forth in that order . . . .

473 F.2d at 559-60.

The opinion of the CAB approving the merger of Northeast into Delta contains, in Appendix I, numerous labor protective provisions. Section three of that Appendix provides:

Insofar as the merger affects the seniority rights of the carriers' employees, provisions shall be made for the integration of seniority lists in a fair and equitable manner, including, where applicable, agreement through collective bargaining between the carriers and the representatives of the employees affected. In the event of failure to agree, the dispute may be submitted by either party for adjustment in accordance with section 13.

Section 13 provides a mechanism for submitting such disputes to the National Mediation Board. The order accompanying the merger opinion provides, in section 2(g), that "Delta shall be subject to the labor protective conditions set forth in Appendix I." Section 4 of that order provides: "Jurisdiction is hereby reserved (1) to make such amendments, modifications, and additions to the labor protective conditions imposed by paragraphs 2(g) and 2(h) above as the circumstances may require . . . ."

The Union seek an order from this court directing Delta to negotiate with the Union regarding the seniority rights of the employees it claims to represent. The subject matter of the request relief is explicitly covered by the order and opinion of the CAB approving the merger. The power of the CAB to issue such an order is well-established. *Kent v. CAB*, 204 F.2d 263 (2d Cir. 1953), *cert. denied*, 346 U.S. 826 (1954). That the CAB has exclusive jurisdiction

over disputes covered by the merger order is equally well-established. See, e.g., *American Airlines, Inc. v. CAB*, 445 F.2d 891, 895 (2d Cir. 1971), *cert. denied*, 404 U.S. 1015 (1972); *Chaudoin v. Air Line Pilots Association*, 6 FEP 107 (D.D.C. 1973); *Master Executive Council v. O'Donnell*, 81 L.R.R.M. 2731 (D.D.C. 1972).

The Union has asserted that this jurisdictional limitation is not applicable when the relief sought is supplementary to the CAB order. This observation, while true generally, has no application to this case. The seniority rights of the employees represented by the Union is explicitly covered by the merger order. That order provides several mechanisms that will afford plaintiff the relief that it seeks. Even if the explicit provisions prove unsatisfactory, the CAB has retained jurisdiction to modify or amend those provisions. The CAB is the appropriate agency to decide these claims. Insofar as plaintiffs seek to challenge the CAB order, it must be challenged by a statutory petition for review pursuant to 49 U.S.C. § 1486 and not by a collateral lawsuit such as this.

Since this court is without jurisdiction over the subject matter of this suit, the complaint must be dismissed.

/s/ J. L. TAURO

*United States District Judge*

**APPENDIX F**  
**Statutory Provisions Involved**

**Statutory Provisions Involved****A. *Railway Labor Act***

Section 2, 35 U.S.C. § 152, provides in pertinent part:

First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

. . . . .

Fourth. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. . . .

**B. *Federal Aviation Act of 1958***

Section 401(k)(4), 49 U.S.C. § 1371(k)(4) provides:

It shall be a condition upon the holding of a certificate by any air carrier that such carrier shall comply with sections 181-188 of Title 45.

Section 408, 49 U.S.C. § 1378, provides in pertinent part:

(b) Any person seeking approval of a consolidation, merger, purchase, lease, operating contract, or acquisition of control, specified in subsection (a) of this section, shall present an application to the Board, and thereupon the Board shall notify the persons involved in the consolidation, merger, purchase, lease, operating contract, or acquisition of control, and other per-

sons known to have a substantial interest in the proceeding, of the time and place of a public hearing. Unless, after such hearing, the Board finds that the consolidation, merger, purchase, lease, operating contract, or acquisition of control will not be consistent with the public interest or that the conditions of this section will not be fulfilled, it shall by order approve such consolidation, merger, purchase, lease, operating contract, or acquisition of control will not be consistent with the public interest or that the conditions of this section will not be fulfilled, it shall by order approve such consolidation, merger, purchase, lease, operating contract, or acquisition of control, upon such terms and conditions as it shall find to be just and reasonable and with such modifications as it may prescribe . . . .

Section 1106, 49 U.S.C. § 1506, provides:

Nothing contained in this chapter shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this chapter are in addition to such remedies.